

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK
UTICA DIVISION

IN RE

WILLIAM PETERSON

DEBTOR

HEARING DATE: June 11, 2019
HEARING TIME: 9:30 AM
HEARING PLACE: Utica

CHAPTER 7

CASE NO. 19-60495-6-dd

JUDGE: Diane Davis

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. § 362(d)
DUE TO A LACK OF ADEQUATE PROTECTION (AND A LACK OF EQUITY)
PURSUANT TO 11 U.S.C. § 361**

Nationstar Mortgage LLC d/b/a Mr. Cooper, ("Secured Creditor") by and through its attorneys, Shapiro, DiCaro & Barak, LLC, makes application for an Order vacating the automatic stay pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001 due to a lack of adequate protection pursuant to 11 U.S.C. § 361, and in support thereof, states as follows:

1. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about April 11, 2019.
2. Nationstar Mortgage LLC d/b/a Mr. Cooper is a Secured Creditor of the Debtor by virtue of a note executed by William A. Peterson and Andrea I. Ruck (non-filing "Co-Borrower") on October 8, 2009 and given to HSBC Mortgage Corporation (USA) securing the repayment of the principal sum of \$125,435.00 due under the Bond/Note and granting Mortgage Electronic Registration Systems, Inc., as nominee for HSBC Mortgage Corporation (USA) a security interest (the "Mortgage") in the Property known as 8 Grace Drive, Greene, NY 13778 (the "Property"). Copies of the Mortgage and Bond/Note (collectively known as the "Loan") are annexed hereto as Exhibit "A". The Loan was assigned to Secured Creditor as memorialized by

instrument dated April 25, 2018 and duly recorded on April 27, 2018 (the “Assignment of Mortgage”). A copy of the Assignment of Mortgage is annexed hereto as **Exhibit “B”**.

3. Debtor defaulted under the terms of the Note & Mortgage for failure to make payments when due. A Certification of Payment History is annexed hereto as **Exhibit “C”**.

4. The amount now due as if April 15, 2019 under the mortgage is as follows:

4 Defaulted Monthly Payments at \$1,567.18 each (January 2018 through April 2018)	\$6,268.72
12 Defaulted Monthly Payments at \$1,184.40 each (May 2018 through April 2019)	\$14,212.80
Fees & Costs Due (Lump Sum)	<hr/> \$5,356.00
Total Delinquencies	\$25,837.52

5. The principal balance due on the Bond/Note secured by the Mortgage is \$108,096.17 and the payoff balance on the Mortgage is approximately \$125,864.02.

6. According to the Debtor's Schedule D, the value of the Property is \$105,000.00. A copy of the Debtor's Schedule D is annexed hereto as **Exhibit “D”**.

7. Upon information and belief, there is little or no equity in the Property and Secured Creditor has not been offered adequate protection for its interest in the Property.

8. According to the Debtor's Statement of Intention, the Debtor intends to surrender the Property to Movant. A copy of the Debtor's Statement of Intention is annexed hereto as **Exhibit “E”**.

9. By failing to make mortgage payments, Debtor has failed to provide Secured Creditor with adequate protection for its interest in the Property.

10. The Movant requests that attorney fees in the amount of \$350.00 and costs of \$181.00 be awarded in bringing this motion if it is granted by default.

11. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. § 362 to allow Secured Creditor to maintain a foreclosure action on its mortgage.

12. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

WHEREFORE, Nationstar Mortgage LLC d/b/a Mr. Cooper respectfully requests that an Order be granted vacating the automatic stay as to allow Secured Creditor to exercise its rights pursuant to the Note and Mortgage and applicable state law including but not limited to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, and for such other and further relief as the Court may deem just and proper.

Dated: May 14, 2019

/s/ Nicole DiStasio

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